

RECORDING REQUESTED BY AND MAIL TO:
(Name and mailing address, including city, state and
ZIP code, of requesting party)

EPPS & COULSON, LLP
Dawn M. Coulson, Esq. (SBN 154085)
Robert C. Jenkins, Esq. (SBN 18859)
1230 Crenshaw Blvd., Suite 200
Torrance, CA 90501

DOC# 2020-0778570



Dec 04, 2020 04:11 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$158.00 (SB2 Atkins: \$75.00)

PAGES: 24

└ SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE ┐

SECOND AMENDED JUDGMENT

SEPARATE PAGE, PURSUANT TO CA. GOV'T. CODE 27361.6

RECORDER'S COVER SHEET

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/21/2020 at 05:58:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

**NORTH COUNTY COMMUNICATIONS
CORP.,**

Plaintiff,

v.

VAYA TELECOM, INC.,

Defendants,

AND RELATED CROSS-ACTIONS.

Case No.: 37-2011-00083845-CU-BC-CTL

**~~PROPOSED~~ SECOND AMENDED
JUDGMENT**

DATE: September 4, 2020

TIME: 10:30 a.m.

DEPT: C-68

Instrument No.: 2016-0153319

On April 9, 2015, after a bench trial, the Court entered a final judgment in favor of Defendant/Judgment Creditor VAYA TELECOM, INC., ("Judgment Creditor") and against Plaintiff in the total amount of \$504,507.93, consisting of \$499,000.00 in attorney's fees and \$5,507.93 in costs. (A true and correct copy of this judgment is attached hereto as Exhibit A to Exhibit 1.)

Previously, on July 15, 2014, the Court entered an order imposing \$92,966.45 in discovery sanctions against Plaintiff and Todd Lesser, consisting of \$74,653.00 in attorney's fees and \$18,313.45 in costs. (A true and correct copy of this discovery sanctions order is attached hereto as Exhibit B to Exhibit 1.) The discovery sanctions order is a judgment pursuant to Code of Civil

1 Procedure sections 680.010, *et seq.* (See Code Civ. Proc. §§ 680.230, 680.270; see also *Jones v.*
2 *Otero* (1984) 156 Cal.App.3d 754, 759.)

3 On May 20, 2019, the Court entered an amended judgment in favor of Defendant/Judgment
4 Creditor VAYA TELECOM, INC., ("Judgment Creditor") and against Judgment Debtors North
5 County Communications Corporation, North County Communications Corporation of California,
6 Todd Lesser, HFT, Inc., and Jartel, Inc. in the total amount of \$597,474.38, consisting of attorney's
7 fees and costs awarded in the two prior judgments. The amended judgment combined the July 15,
8 2014 and April 9, 2015 judgements and added alter egos as judgment debtors. (A true and correct
9 copy of this amended judgment is attached hereto as Exhibit 1.)

10 On September 4, 2020, the Court entered an order granting Judgment Creditor's motion to
11 amend the May 20, 2019, amended judgment to include the following costs of enforcing the
12 judgment:

- 13 a. \$325,366.70 in accrued interest through August 7, 2020;
- 14 b. \$404,562.00 in attorney's fees to enforce the judgment through July 2, 2020;
- 15 c. \$12,228.63 in reasonable and necessary expenses pursuant to Code of Civil
16 Procedure sections 685.040 and 685.080;
- 17 d. \$1,964.56 in costs pursuant to Code of Civil Procedure sections 685.070(a)(5),
18 1033.5 and 708.110;
- 19 e. \$1,251.00 in costs pursuant to Code of Civil Procedure sections 685.070 and 1133.5;
20 and
- 21 f. \$14,307.00 in prior sanctions ordered by the Court.

22 Total: \$759,679.89

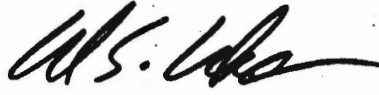
23 **ACCORDINGLY, JUDGMENT IS HEREBY ENTERED** as follows:

24 Judgment is entered in favor of Judgment Creditor and against North County
25 Communications Corporation, North County Communications Corporation of California, Todd
26 Lesser, HFT, Inc., and Jartel, Inc. for the total amount of **\$1,357,154.27**. The Court reserves
27 jurisdiction to make such other orders as may be necessary to carry out this Judgment and to address
28 other matters between the parties relating to this proceeding that may arise.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: 9-21-2020



Honorable Richard S. Whitney
Judge of the Superior Court

Exhibit 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
05/20/2019 at 10:57:00 AM
Clerk of the Superior Court
By Candace Schaeffer, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

**NORTH COUNTY COMMUNICATIONS
CORP.,**

Plaintiff,

vs.

VAYA TELECOM, INC.,

Defendant,

**CASE NO.: 37-2011-00083845-CU-BC-
CTL**

[PROPOSED] AMENDED JUDGMENT

On April 9, 2015, after a bench trial, the Court entered a final judgment in favor of Defendant/Judgment Creditor VAYA TELECOM, INC., ("Judgment Creditor") and against Plaintiff in the total amount of \$504,507.93, consisting of \$499,000.00 in attorney's fees and \$5,507.93 in costs. (A true and correct copy of this judgment is attached hereto as Exhibit A.)

Previously, on July 15, 2014, the Court entered an order imposing \$92,966.45 in discovery sanctions against Plaintiff and Todd Lesser, consisting of \$74,653.00 in attorney's fees and \$18,313.45 in costs. (A true and correct copy of this discovery sanctions order is attached hereto as Exhibit B.) The discovery sanctions order is a judgment pursuant to Code of Civil Procedure sections 680.010, *et seq.* (See Code Civ. Proc. §§ 680.230, 680.270; see also *Jones v. Otero* (1984)

1 156 Cal.App.3d 754, 759.)

2 On May 9, 2019, the Court entered an order granting Judgment Creditor's motion to amend
3 the judgments to include alter egos as judgment debtors, ordering that the judgments be amended to
4 include North County Communications Corporation, North County Communications Corporation
5 of California, Todd Lesser, HFT, Inc., and Jartel, Inc. as judgment debtors.

6 **ACCORDINGLY, JUDGMENT IS HEREBY ENTERED** as follows:

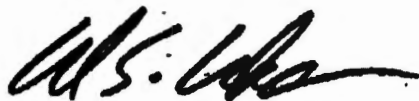
7 1. Judgment is entered in favor of Judgment Creditor and against North County
8 Communications Corporation, North County Communications Corporation of California, Todd
9 Lesser, HFT, Inc., and Jartel, Inc. on all causes of action set forth in the Complaint, and as further
10 set forth in the Statement of Decision filed with this Court.

11 2. Judgment is entered in favor of Judgment Creditor and against North County
12 Communications Corporation, North County Communications Corporation of California, Todd
13 Lesser, HFT, Inc., and Jartel, Inc. for the total amount of \$397,474.38, which includes the attorney's
14 fees and costs awarded in the two prior judgments (attached as Exhibits A and B hereto).

15 Jurisdiction is reserved by this Court to make such other orders as may be necessary to carry
16 out this Judgment and to address other matters between the parties relating to this proceeding that
17 may arise.

18
19 **IT IS SO ORDERED.**

20
21 Dated: 5/20/2019



Honorable Richard S. Whitney
Judge of the Superior Court

Exhibit A

FILED
Clerk of the Superior Court

APR - 9 2015

FILED
Clerk of the Superior Court

APR 09 2015

Ey. Y. TERRONEZ, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

NORTH COUNTY COMMUNICATIONS
CORP.,

Plaintiff,

vs.

VAYA TELECOM, INC.,

Defendant.

Case No. 37-2011-000083845

JUDGMENT
(PROPOSED)

A bench trial was held in this proceeding from March 9, 2015 to March 11, 2015 before Judge Timothy Taylor in Dept. 72 of the San Diego Superior Court. Representatives from both the Plaintiff and the Defendant were present throughout the trial.

Judgment is entered in favor of Defendant and against Plaintiff on all causes of action set forth in the Complaint, and as further set forth in the Statement of Decision filed with this Court.

Judgment is entered in favor of Defendant for Costs in the amount of \$ 5507.93
as supported by the Memorandum of Costs filed by Defendant pursuant to Cal. Code Civ. Proc.

§§1032 and 1033.5. An award of attorney's fees pursuant to Cal. Code Civ. Proc. §1717 may be awarded separately by Noticed Motion. in the amount of \$ 499,000.00

///

1 Jurisdiction is reserved by this Court to make such other orders as may be necessary to carry
2 out this Judgment and to address other matters between the parties relating to this proceeding that
3 may arise.

4 4/9/15

5 DATE

6 Timothy Taylor
7 JUDGE TIMOTHY TAYLOR



CLERK'S CERTIFICATE

The foregoing document, consisting of
pages, is a full, true, and correct
copy of the original copy on file in
this office.

4/22/16
by K. Breckenridge
Clerk of the Court

K. BRECKENRIDGE

Exhibit B

F I L E D

Clerk of the Superior Court

JUL 15 2014

By: R. GERSHMO, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

**NORTH COUNTY COMMUNICATIONS
CORPORATION, a California corporation,**

Plaintiff,

v.

**VAYA TELECOM, INC., a California
corporation; and DOES 1 through 100,
inclusive,**

Defendants.

Case No. 37-2011-00083845-CU-BC-CTL

Discovery Referee: Hon. Steven R. Dutton (Ret.)

**REPORT AND RECOMMENDED ORDER
REGARDING VAYA TELECOM INC'S
REQUEST FOR MONETARY AND
TERMINATING SANCTIONS FOR
MISUSE OF THE DISCOVERY PROCESS,
AND FAILURE TO PRODUCE
ACCOUNTING RECORDS COMPELLED
BY THE COURT**

**Judge: Hon. Judith Hayes
Dept: C-68
Action Filed: January 14, 2011
Trial Date: August 1, 2014**

On May 15, 2014, this Discovery Referee engaged in a lengthy and comprehensive in-person hearing regarding several discovery issues in this matter, including Defendant Vaya Telecom, Inc. ("Vaya's") Request for Sanctions Against Plaintiff North County Communications Corp. ("NCC") and its President, Todd Lesser, for Misuse of the Discovery Process. Prior to the hearing, Vaya provided a written submission which included Declarations from all of Vaya's counsel providing evidence supporting the request for sanctions. Vaya seeks both monetary and terminating sanctions pursuant to California Code of Civil Procedure based on NCC's repeated pattern of providing false and misleading discovery responses, NCC's

1 filing of unsuccessful oppositions to Vaya Motions to Compel, NCC's willful violation of the
2 Court Orders compelling the production of financial records of NCC and two of its affiliates,
3 HFT, Inc. ("HFT") and Jartel, Inc. ("Jartel") and NCC's failure to comply with the Court's
4 Order requiring NCC's President and sole owner, Todd Lesser, to submit to another day of
5 deposition. The Discovery Referee read and considered all papers submitted by the parties and
6 heard and considered all arguments made by the parties at the May 15, 2014 hearing.

7 **I. Background**

8 This case involves disputes regarding what compensation may be owed from Vaya to
9 NCC for terminating calls from Vaya's customers to NCC's affiliates, HFT and Jartel. Vaya
10 has raised several defenses asserting infirmities in NCC's regulatory compliance and business
11 operations that allegedly limit or bar the amount NCC may charge for its termination services.
12 Since February 2013, Vaya has been attempting to obtain discovery necessary to prove
13 its defenses and to defeat NCC's claims. In particular, Vaya has attempted to get evidence that
14 NCC and engages in a practice referred to as "notes stimulation" a/k/a "traffic pumping." If
15 proved this conduct could cap the rate NCC is permitted to charge Vaya at a rate much lower
16 than the rate NCC invoiced Vaya or defeat the claim entirely. The determination could also
17 have application to other issues in the matter.

18 Both the Discovery Referee and the Court ruled in several orders that records relating to
19 NCC, HFT and Jartel's business and financial relationships are relevant to and discoverable in
20 this case. Most recently, the Discovery Referee issued two recommended rulings compelling
21 NCC, HFT and Jartel to produce documents which relate to their business and financial
22 relationships, including two specific types of Quick Books accounting records. Mr. Todd
23 Lesser, the sole individual owner of NCC, HFT and Jartel, testified to the existence of these
24 records during his deposition taken in this proceeding.

25 Throughout the discovery process, Vaya has attempted to obtain records evidencing that
26 NCC, HFT and Jartel share revenues or other things of value and/or an agreement between or
27 among them to cooperate in traffic pumping which might reduce or eliminate NCC's claim for
28 those services. Mr. Lesser testified during his deposition that accounting records exist that

1 include information regarding the business and financial relationships between NCC, HFT and
2 Jartel. Despite the Court Orders requiring NCC, HFT and Jartel to produce these records,
3 without any explanation or justification for prior discovery responses denying the existence of
4 any revenue sharing arrangements, NCC and Mr. Lesser have willfully refused to produce them.

5 II. Discussion

6 A. NCC, HFT, Jartel and Todd Lesser Evaded Discovery Requests, Represented to 7 Vaya that No Documents relating to Revenue Sharing Exist and Denied a Request 8 for Admission that It Engages in Revenue Sharing

9 1. Request for Production of Documents (Set 3)

10 After a hearing, Discovery Referee issued a ruling directing NCC to produce any
11 documents responsive to RFPD No. 4 (revenue sharing agreements), among others, to the extent
12 they exist. The Court adopted Discovery Referee's ruling in its entirety without changes, and
13 directed parties to produce documents (including responses to RFPD No. 4) within 30 days of
14 the date of the Order. NCC did not seek reconsideration of the Court's Order. Plaintiff
15 provided supplemental responses to RFPD Set 3, No. 4, asserting again that it had no revenue
16 sharing agreements and that none ever existed.

17 2. Requests for Admission

18 Vaya served NCC with Requests for Admission ("RFA"). RFA Nos. 4, 5 and 10 asked
19 whether NCC shared revenues with customers or affiliates that are free conference calling or
20 chat line companies. NCC responded with an unequivocal denial that it shared revenues with
21 customers or affiliates that are free conference calling or chat line companies.

22 3. Deposition Notices and Requests for Production

23 Vaya issued deposition notices to NCC for its Person Most Qualified ("PMQ"), its
24 expert witness Mr. Todd Lesser, and Mr. Lesser as a percipient witness. NCC objected to
25 producing documents asserting that it had already produced responsive documents.

26 NCC failed and refused to produce documents relating to any payments or other
27 financial transfers to, from by or between NCC and any business providing free international or
28 conference calling, or chat line services, or between Mr. Lesser and those same businesses.

1 ///

2 ///

3 4. Non-party Subpoenas Issued to HFT and Jartel

4 Vaya issued non-party subpoenas to HFT and Jartel, affiliates of NCC that are also
5 wholly owned by Mr. Todd Lesser. The subpoenas sought business records from HFT and
6 Jartel, including production of documents relating to payments or other financial transfers from
7 NCC to Jartel, and from NCC to HFT. RFP No. 9 in HFT and Jartel subpoenas. HFT and Jartel
8 served objections to Vaya's non-party subpoenas.

9 Discovery Referee issued a ruling instructing HFT and Jartel to produce documents in
10 response to Vaya's subpoenas, including RFP No. 9 seeking documents relating to payments or
11 other financial transfers from NCC to Jartel, and from NCC to HFT. The Court adopted
12 Discovery Referee's order in its entirety, and thereby compelled NCC to produce documents.

13 NCC produced some checks from HFT and Jartel to NCC, but did not produce any
14 records relating to payments or financial transfers from NCC to HFT or Jartel.

15 After a further hearing, Discovery Referee issued a ruling finding that Vaya was entitled
16 to documents relating to ordered NCC to financial transactions and money flows between or
17 among NCC, HFT and Jartel, specifically including documents responsive to RFP No. 9 that had
18 already been compelled by the Court. Discovery Referee found that Vaya was entitled to
19 documents responsive to RFP Nos. 11 and 12 in Vaya's non-party subpoenas issued to HFT and
20 Jartel.

21 Discovery Referee ruled that such documents specifically included "any form of
22 accounting records or reports whether stored electronically or otherwise." Feb. 14, 2014 Ruling,
23 at p. 1, ¶2. Also Vaya was entitled to depose Mr. Lesser on the topics of financial transfers
24 between or among NCC, HFT and Jartel and that if Vaya discovered that documents on these
25 topics exist, "the need for further depositions and sanctions may be addressed." Feb. 14, 2014
26 Ruling, at p. 1, ¶3.

27 Vaya proceeded with Mr. Lesser's deposition as NCC's Person Most Qualified. During
28 Mr. Lesser's deposition, Vaya obtained admissions that Mr. Lesser maintains accounting

1 records for NCC, HFT and Jartel in Quick Books. Mr. Lesser testified that records are now kept
2 separately for each company; previously (at least five or six years ago) Mr. Lesser kept
3 accounting records in a system that integrated all of the financial information for all of his
4 companies.

5 Vaya and NCC participated in a hearing with Discovery Referee at which Vaya sought
6 production of NCC, HFT and Jartel's Quick Books accounting records. Discovery Referee
7 reviewed the rough transcripts of Mr. Lesser's deposition and concluded that "NCC, HFT Inc.
8 and Jartel Inc. have not fully complied with prior orders and discovery requests for said records and
9 failed to produce existing standard accounting records reflecting financial transactions between these
10 entities." Discovery Referee issued a ruling directing NCC to produce its Quick Books accounting
11 records for NCC, HFT and Jartel. The ruling stated that "Mr. Lesser's deposition testimony
12 contains persistent and consistent absence of memory as well as frequent non-responsive
13 answers which have unduly prolonged the length of the questions and made discovery of the
14 pertinent financial data impossible without additional and broader and more intrusive orders."
15 Discovery Referee granted Vaya's request for an additional day of deposition for Mr. Lesser.
16 Judge Denton February 24, 2014 Ruling. The Court adopted the ruling. Minute Order, April
17 14, 2014.

18 **B. Vaya's Motions to Compel Discovery Responses**

19 NCC's, HFT's and Jartel's evasive and false responses to requests for production of
20 documents and requests for admission has necessitated Vaya to file multiple motions to compel
21 which were granted both by Discovery Referee and the Court

22 **C. NCC, HFT and Jartel Failed to Comply with Orders Compelling Production of**
23 **Accounting Records**

24 One of the April 14, 2014 Court Orders compelled NCC, HFT and Jartel to produce all
25 of the following financial records:

- 26 1. ...documents from 2009 to the present that reflect, pertain or relate to any
27 payments or financial transfers to, from, by or between NCC, HFT and Jartel that
28 occurred during that period per prior ruling to RFP 9 in Order of Court dated
12/30/2013. Personal records of Mr. Lesser shall be redacted.

2. ...documents requested by Vaya in response to Request for Production No. 18 and 19 in Mr. Lesser's peripatent witness deposition notice which shall include any form of accounting records or reports whether stored electronically or otherwise.

In addition, the Order states:

3. Vaya is entitled to depose Mr. Lesser on the topics of any payments or financial transfers to, from, by or between NCC, HPT and Jartel regardless of whether those entities have documents in their possession regarding such payments or financial transfers. If it appears responsive documents exist or are under the control of Plaintiff and have not been produced, the need for further depositions and sanctions as warranted may be addressed.

Court Order dated April 14, 2014 at p. 1; see also, Discovery Referee's February 14, 2014

Ruling and Proposed Order:

The Court also ordered NCC, HPT and Jartel to produce the following accounting records:

1. Plaintiff is ordered to produce a 'General Ledger Detail Report' as well as a complete 'QBB File' without deletions from all QuickBooks systems which contain financial data of NCC, HPT, Inc. and or Jartel, however they are maintained and regardless if they also contain other accounting data from Mr. Lesser or any other entities. This produced data shall be from January 1, 2009 to present, however, if it is not possible to limit these productions by the date then the entire data will be produced without time limitation. This production shall be made subject to the applicable protective order already in place. This order is made as an alternative to an order to physically produce the computer that contains such accounting records, however, without prejudice to making such an additional order. This production order shall occur by physical delivery to defense counsel's San Diego offices on or before noon February 26, 2014.

Court Order dated April 14, 2014 at p. 3; see also Discovery Referee's Proposed Order dated

February 24, 2014. Finally, the Court's Minute Order dated April 14, 2014 states:

Notwithstanding the above, the Court confirms Judge Denton's recommendations with the single exception that as to item #1, p.3:17, plaintiff is ordered to produce the "General Ledger Detail Report" as recommended by Judge Denton except the production shall redact any purely personal accounting data of Mr. Lesser. All other information is to be provided as recommended by Judge Denton. Further the Proposed Order is amended to reflect the same.

NCC has failed to comply with these Orders. NCC did not produce the accounting records. *Id.* at paras. 66-68.

1 At hearing, NCC provided no explanation as to why it failed to comply with the Orders
2 and said nothing to the Discovery Referee that revealed any intention of complying with the
3 Court's Orders at any time in the future.

4 D. NCC and Mr. Leaser are Subject to Sanctions for Discovery Abuses

5 California Code of Civil Procedure §2023.010 provides sanctions for a party's misuse of
6 the discovery process. Misuses of the discovery process include opposing unsuccessfully and
7 without substantial justification, a motion to compel and disobeying a court order to provide
8 discovery. Cal. Code Civ. Proc. §§2023.010 (g) and (h). NCC and its President Todd Leaser
9 have repeatedly misused the discovery process in both of these ways and should accordingly, be
10 subject to sanctions. A court may impose the following sanctions for misuse of the discovery
11 process: (a) monetary sanctions, including attorney's fees, incurred by the other party to the
12 litigation as a result of the misusing party's conduct; (b) issue sanctions, ordering that
13 designated facts be taken as established in accordance with the claim of the party adversely
14 affected by the misuse; (c) issue sanctions, prohibiting the party engaging in the misuse of
15 discovery from supporting or opposing designated claims or defenses; (d) evidentiary sanctions,
16 prohibiting the misusing party from introducing designated matters into evidence; (e)
17 terminating sanctions, striking the pleadings of the misusing party or dismissing the action in its
18 entirety; and (f) contempt sanctions, treating the misuse of the discovery process as a contempt
19 of court. Cal. Code of Civ. Proc. §2023.030 (a-e).

20 Based on a review of the written documents submitted, the arguments of parties during
21 the May 15, 2014 hearing and giving consideration to the totality of the hours of hearings and
22 review the Discovery Referee has expended in this matter, both monetary and issue sanctions,
23 ordering that designated facts be taken as established in accordance with the defendant's
24 affirmative defense are appropriate.

25 NCC was put on notice that if it failed to comply with orders of the Court, sanctions may
26 be imposed. Despite these warnings, the use of progressive discipline in the form of orders to
27 compel has failed to cause NCC to comply. Therefore, this Discovery Referee recommends that
28

1 the Court impose issue sanctions and monetary sanctions including an award of attorney's fees
2 and costs incurred by Vaya as a result of NCC and Mr. Lesser's abusive discovery behavior.

3 1. Monetary Sanctions are Appropriate

4 If a party opposes a motion to compel the production of documents without substantial
5 justification, the other party is entitled to attorney's fees and costs for the motions, hearings and
6 other actions taken in attempt to obtain the discoverable information. Cal. Code Civ. Proc.
7 §2031.300(c); *London v. Dr-Horning Corp.*, 117 Cal. App. 4th 999 (2004). The award of
8 monetary sanctions is meant to compensate the non-abusing party for costs and attorney's fees
9 incurred as a result of a party's misuse of the discovery process. *Parker v. Walters Kluwer*
10 *United States, Inc.*, 149 Cal. App. 4th 285, 294 (2007)

11 Here Vaya was forced to file multiple motions to compel NCC's response to discovery
12 relating to the business and financial relationships between Mr. Lesser's companies, NCC, HFT
13 and Jartel.

14 The Declarations of Anita Taff-Rice, Robert Kraier and Michel Singer Nelson provide
15 detailed evidence of substantial costs and attorney's fees incurred by Vaya in relation to
16 motions to compel, motions for reconsideration and failure to comply with Court Orders. Those
17 claims total \$97,131.76 in attorney's fees and \$17,080.73 in costs. Vaya submitted
18 supplemental declarations supporting additional fees and costs expended for preparation for and
19 participation in, the May 15, 2014 hearing with this Discovery Referee and preparation of
20 proposed orders, as directed by the Discovery Referee totaling \$12,397.00 in attorney's fees and
21 \$1,232.72 in costs.

22 NCC has failed to provide any persuasive facts or argument on why monetary sanctions
23 should not be imposed. NCC has not presented any evidence demonstrating that its refusal to
24 produce business and financial information relating to NCC, HFT and Jartel was substantially
25 justified.

26 The court may order monetary sanctions when the successful party obtains orders
27 compelling the information sought, which has occurred here. See, e.g., *London v. Dr-Horning*
28 *Corp.*, 117 Cal. App. 4th at 1008.

1 Discovery Referee has reviewed these declarations in detail and concludes that the
2 amounts claimed in the declarations are to some degree excessive and duplicative. Monetary
3 sanctions for attorney fees should reflect only reasonable fees for services necessary and
4 required for the work required. Discovery Referee has reviewed those declarations and reduced
5 the claims by the amounts determined to be excessive. For all of these reasons, this Discovery
6 Referee rules that Vaya should be awarded the total monetary sanctions in the amount of
7 \$74,653.00 in attorney fees and \$18,313.45 in costs.

8 **2. Issue Sanctions and not Terminating Sanctions are Appropriate**

9 In addition to monetary sanctions, issue sanctions are also appropriate for discovery
10 misuses. Cal. Code of Civ. Pro. §2023(b). Terminating sanctions are a potent sanction, and
11 should be ordered only when the particular circumstances warrant. In this instance, the
12 Discovery Referee believes that the pattern of conduct, in which NCC has willfully misused the
13 discovery process and refused, without any basis, to comply with Court Orders, justifies serious
14 sanctions. NCC, HFT, Jartel and Mr. Lesser have repeatedly denied the existence of documents
15 in its possession and failed to produce documents following orders to produce those documents.
16 NCC denied that it shared revenues with its affiliates until faced with the obligation to produce
17 relevant records.

18 Based on the entire pattern of conduct, this Discovery Referee recommends that the
19 Court impose issue sanctions and not terminating sanctions as requested by Vaya. Discovery
20 sanctions should not be issued to punish a party or to place another party in a better position
21 than it would have been had the discovery been produced. *Dayo v. Kildanthe* (1978) 84
22 Cal.App.3d 771, 773, *Marriage of Chakio* (2004) 115 Cal.App.4th 104, 109.

23 The fundamental basis for the financial discovery ordered in this matter to date has been
24 on the basis that it was necessary and required for Vaya to assert its defense that NCC has
25 engaged in "traffic pumping" which would limit or eliminate its right to charge Vaya for its
26 services. Therefore, issue sanctions in which establish that NCC would be precluded from
27 denying that NCC has engaged in traffic pumping as to all of the services and for all the time
28 periods claimed in this matter is the most appropriate sanction. NCC should not be permitted in

1 further proceedings to introduce evidence that for the services rendered that it did not engage in
2 "access stimulation" as that term is defined in the applicable FCC standards.

3 In addition, Mr. Lesser shall be ordered to appear for deposition and to produce
4 documents as limited by the previous order as to all remaining issues

5 **III. Order**

6 For all of the foregoing reasons, the Discovery Referee recommends that the Court
7 impose both monetary and issue sanctions jointly on NCC and Todd Lesser due to their repeated
8 willful misuse of the discovery process which has prevented Vaya from discovering facts
9 essential to defend itself against NCC's claims for compensation. Accordingly, the Court
10 orders:

- 11 (1) monetary sanctions consisting of attorney's fees in the amount of \$74,633.00 and
12 costs in the amount of \$18,313.43; and
13 (2) issue sanctions establishing that NCC has for 100 percent of the traffic at issue in this
14 case, and for all periods at issue, has engaged in access stimulation ("traffic
15 pumping") as that term is defined according by the FCC. NCC shall be precluded
16 from evidencing that it has not engaged in access stimulation as to the rate that
17 should be applied to any claimed traffic. This determination shall further have
18 application to any and all issues in the case to which it may have relevance.
19 (3) The previously ordered further of deposition of Mr. Lesser shall proceed as
20 previously ordered on all remaining issues in this matter at a time and place to be
21 arranged by the parties within 30 days of this order. The court reserves jurisdiction
22 to order any new or further sanctions in the event this order is not complied with,

23
24 This Order is effective immediately. Monetary sanctions are to be paid to Vaya within thirty
25 (30) days of the date of this Order.

26
27
28 Dated: June 20, 2014



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

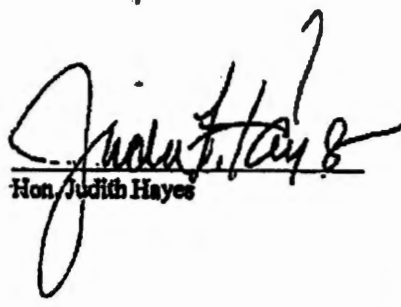
Hon. Steven R. Denton (Ret.)
Discovery Referee

ORDER

Good cause having been found, the rulings of the Discovery Referee set forth above are hereby ordered.

IT IS SO ORDERED.

Dated: 7-15, 2014


Hon. Judith Hayes

PROOF OF SERVICE

I am employed in the county of Orange, State of California. I am over the age of eighteen and not a party to the within action, and my business address is: 1851 E. First Street, Suite 1600, Santa Ana, CA 92705

On June 26, 2014, I served the following document: **REPORT AND RECOMMENDED ORDER REGARDING VAYA TELECOM INC'S REQUEST FOR MONETARY AND TERMINATING SANCTIONS, FOR MISUSE OF THE DISCOVERY PROCESS, AND FAILURE TO PRODUCE ACCOUNTING RECORDS COMPELLED BY THE COURT** on the interested parties in the matter of **NORTH COUNTY COMMUNICATIONS CORP. VS. VAYA TELECOM, INC.** by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

R. Dale Dixon Jr., Esq.
The Law Offices of R. Dale Dixon
1155 Camino Del Mar, Suite 497
Del Mar, CA 92014
Email: dale@dalexixonlaw.com

Michel Singer Nelson, Esq.
Vaya Telecom, Inc.
5190 Golden Foothill Parkway
El Dorado Hills, CA 95762
Email: mnelson@aol.com

Joseph G. Dickz, Esq.
Dickz & Workman
750 B Street, Suite 2720
San Diego, CA 92101
Email: jdickz@dickz-workmanlaw.com

Robert G. Knauer, Esq.
Kenneth M. Fitzgerald, Esq.
Chapin, Fitzgerald, LLP
550 West C Street, Suite 2000
San Diego, CA 92101
Email: rknauer@cftriallaw.com
Email: kfitzgerald@cftriallaw.com

Anita Tuff-Rice, Esq.
Law Offices of Anita Tuff-Rice d/b/a iComm Law
1547 Palos Verdes Mall, Suite 296
Walnut Creek, CA 94597
Email: anita@icommaw.com

Hon. Judith Hayes
Superior Court of California
County of San Diego
22 West Broadway, Dept. 68
San Diego, CA 92101
US Mail Only

☒ I am readily familiar with the business practice for collection and processing of correspondence and mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit with postage thereon fully prepaid at Santa Ana, California, in the ordinary course of business.

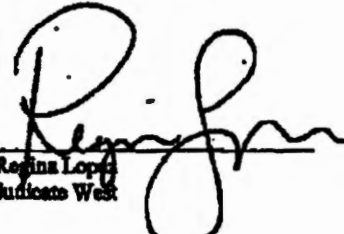
☒ By electronic mail

☐ By Facsimile, on _____ I faxed such document from our facsimile telephone number (714) 834-1344 to the offices of the parties as stated on the service list. The document was transmitted by facsimile transmission and the transmission was reported as complete and without error.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 26, 2014, at Santa Ana, California.


Regina Lopez
Judicate West

PROOF OF SERVICE



CLERK'S CERTIFICATE

The foregoing document, consisting of
44 page(s) is a full, true, and correct
copy of the ☒ original ☐ copy on file in
this office.

Clerk of the Superior Court

Date: 10/1/20

by C. Brennan

Deputy

C. Brennan